

Supreme Court, U. S.  
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MICHAEL RODAK, JR., CLERK

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IN THE  
**Supreme Court of the United States**

October Term, 1975

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No. **75-1577**

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JOSEPH A. BRODERICK,

*Petitioner,*

v.

CATHOLIC UNIVERSITY OF AMERICA,

*Respondent.*

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On Petition for Writ of Certiorari to the United States  
Court of Appeals for the District of Columbia Circuit

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REPLY BRIEF OF PETITIONER  
JOSEPH A. BRODERICK

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Respondent's brief — a) by conceding that federal funds at respondent University flowed directly into faculty salaries; b) by aggressively justifying the application of those funds to serve religious purposes; and c) by insisting that such religious application of those funds is immune to judicial challenge — makes a most convincing case that certiorari should be granted.

Thus respondent's brief candidly concedes that federal funds were used to pay faculty salaries:

"In attempting to raise the governmental-action question, the petitioners rely on the facts that the University receives federal financial aid (approximately 25 percent of its annual revenues), that it places those monies in its general unrestricted funds, and that it pays the salaries of its faculty from such general funds . . ." (R. 11).\*

These federal funds were concededly disbursed inequitably among faculty members to serve religious rather than educational purposes — a practice strenuously and expressly justified by respondent on religious grounds:

" . . . The practice [of clerical discount in faculty salaries] was also intended to prevent competition, for financial reasons, among the diocesan clergy for appointments to Catholic University, and to deter those who had been appointed from declining to work in their home dioceses if needed." (R.3).\*\*

\* \* \*

"Furthermore, the clerical salary policy challenged here was adopted for religious reasons . . ., and there is great value in preserving the right of a private, religious educational institution to establish religiously related policies free from judicial interference based on a bare pretext of governmental action . . ." (R. 14-15).

\* Citations to "R\_\_" refer to respondent's brief: "P\_\_" refers to petition.

\*\* But cf., *Tilton v. Richardson*, 403 U.S. 672, 683-5 (1971), where the Court declared unconstitutional one application of federal funds where there was a possibility that in the distant future religious rather than educational purposes would be served.

Here in its purest form is respondent's claim of entitlement to federal government financing of its avowedly religious policy. Respondent argues, quite disarmingly, that notwithstanding the careful strictures of *Tilton*\*, once funds are granted to a religiously related institution of higher education, their use becomes immune to challenge, and they can be used for unrestricted religious purposes. One would not have thought that *Roemer*\*\* and *Tilton* had left *Schemmp*\*\*\* so far behind.

Petitioner's contentions, directly contested by respondent's brief, come to this:

1. A statute authorizing federal educational grants, for specific and limited purposes, to religiously affiliated higher educational institutions might be upheld as not, without more, involving aid to "church" (*Schemmp*) or entailing "entanglement" (*Tilton*).

2. There is no constitutional limitation on the government's power, and responsibility, to ferret out specific misuse (whether larcenous or religious) of such legitimately appropriated educational funds.

3. The statutory limitation as to governmental supervision of funds granted to educational institutions (20 U.S.C. Section 1232a) cannot constitutionally be read as disarming the government from proceeding against any patent misuse (for religious purposes) of legitimately authorized educational funds. To read it so would itself constitute an Establishment, i.e., by establishing a

\* *Tilton v. Richardson*, 403 U.S. 672 (1971).

\*\* *Roemer v. Board of Public Works of Maryland*, 44 U.S.L.W. 4939 (1976).

\*\*\* *Abington School District v. Schemmp*, 374 U.S. 203 (1963).

sanctuary for free religious activities financed directly by federal funds\*.

4. A recipient of federal educational funds is legally required to use these funds for the specific educational purposes for which they were awarded. Further, a religiously affiliated educational institution is constitutionally required not to use them for independent religious purposes.

5. For these reasons respondent's claim of "Free Exercise" sanctuary to use educational funds as unrestricted is novel and constitutionally unacceptable.

6. Plaintiff in a contract action\*\* for salary paid in part directly from such Government educational funds may rely upon the recipient institution's constitutional obligation, as above outlined, and obtain court enforcement of the constitutional and statutory requirement that respondent use educational funds for educational and not for religious purposes.

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\* The suggestions in this area in the petition were perhaps too restrictive (see P. 9, 11, 12). Thus HEW counsel has reserved "constitutional considerations" in referring to government exclusion by statute from "interference in the . . . direction, supervision, . . . administration, or personnel of any educational institution . . ." (P. App. E).

\*\* Respondent's suggestion (P. 17-19) that contractual disputes between itself and petitioner are "internal religious matters" of the church with which both are affiliated should receive short shrift. Petitioner is a law professor with tenure at respondent's law school, teaching secular legal courses. By happenstance, he is one of two priests on the law school faculty, but the premise of his employment is his legal education, practice and background and not his religious status. Negotiations with respect to his tenure contract were had between him and respondent, and enforceable legal consequences stemmed therefrom which were fully considered by the Court below. Respondent has represented itself as an educational institution; it has dealt with petitioner and all of its law professors as such; and it has qualified as such for the receipt of federal funds. It may not be permitted to use its religious affiliation as a shield to prevent judicial scrutiny.

7. In light of *Roemer*\*, the very fact that respondent makes the argument that the professor-educational institution relationship in a church-related institution is an internal religious affair underscores the desirability for this Court, in this case, to grant certiorari.

July 21, 1976

Respectfully submitted,

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\* *Roemer v. Board of Public Works of Maryland*, 44 U.S.L.W. 4939 (1976). *Roemer*, of course, involved state and not federal funds. In *Roemer* the Court considered the process by which state aid was disbursed, and "no particular use of state funds" was before it. The Court assumed that the college recipients of state funds would "exercise their delegated control over use of the funds in compliance with the statutory, and therefore the constitutional, mandate", expecting that they would "give a wide berth to 'specifically religious activity,' and thus minimize constitutional questions". It noted that "[s]hould such questions arise, the courts will consider them." (44 U.S.L.W. 4946-7).

see

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